

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 98-699

October 20, 1998

BANGOR HYDRO-ELECTRIC COMPANY
Request for Approval of Certificate
of Public Convenience and Necessity
for Contract With New England Electric
System and Approval of Waiver of Notice
Requirement or in the Alternative, Request
for Advisory Ruling

ORDER

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

I. SUMMARY

In this Order, we issue a Certificate of Public Convenience and Necessity allowing Bangor Hydro-Electric Company (BHE or Company) to enter into a purchase power agreement with New England Power (NEP), a subsidiary of New England Electric System (NEES), subject to the conditions contained in a Stipulation agreed to by the Company and the Public Advocate (OPA).

II. BACKGROUND

In September 1994, BHE entered into a contract with NEP to purchase 30 MW of capacity and energy for a period of 5 years, concluding October 31, 1999. The rate paid by BHE was based on NEP's marginal costs. BHE sought Commission approval because it was purchasing generating capacity of more than 1000 KW for a period of more than 3 years. 35-A M.R.S.A. §§ 3131, 3133. The Commission issued a Certificate of Public Convenience and Necessity, and approved a stipulation agreed to by OPA, BHE and the Commission's Advocacy Staff. Bangor Hydro-Electric Company, Petition for Certificate of Convenience and Necessity to Purchase Generating Capacity and Energy from New England Power, Pursuant to 35-A M.R.S.A. § 3133 and Chapter 332 of Commissions Rules and Requests for Waivers, Docket No. 94-356 (May 23, 1995).

In August of 1998, NEES sold substantially all of its generating units that formed the basis for the contract price. This necessitated a renegotiation of the contract. BHE and NEP terminated the original contract and entered into a new contract for the period September 1, 1998 through October 31, 1999.

Pursuant to 35-A M.R.S.A. § 3133(10-A), the Commission must approve any amendment, extension or renewal of a contract, if the contract was originally subject to Commission approval. The Commission may not waive this requirement if the purchase involves generating capacity that exceeds 5% of installed capacity. In its current filing, BHE asks the Commission to consider issuing an advisory ruling determining that termination of the original contract, and entering into a new one for one year, does not trigger the 35-A M.R.S.A. § 3133(10-A) approval requirement for an "amendment, extension or renewal." In the alternative, BHE requests the Commission waive the notice requirement and issue a certificate.

Although called a termination and new contract, we believe the transaction is essentially an amendment subject to our approval. Therefore, we have processed this case as a request for a certificate. Because BHE's purchase from NEP exceeds the 5% threshold, we cannot waive the approval requirement.

With its request, BHE submitted a stipulation agreed to by BHE and the Public Advocate. BHE and OPA agree that in the event the Commission does not issue an advisory ruling, that the certificate should issue with BHE bearing all risks associated with changes in costs arising from the termination of the original agreement.

III. DESCRIPTION OF CONTRACT

The new contract begins on September 1, 1998 and continues through the term of the original contract, October 31, 1999. The significant terms of the replacement contract are similar in result to those in the original contract as follows:

1. The contract purchase is for 15 MW from both Millstone 3 and Seabrook 1, both of which entitlements are still owned by NEP after divestiture.
2. BHE may reduce the purchase under conditions related to its sales to two large industrial customers.
3. The price is composed of a capacity charge and an energy charge:

- a. The capacity charge is unchanged from the original contract.
 - b. The energy charge is recalculated because the original contracted cost was based on a formula using NEP's marginal cost of generation, a value that no longer exists. Unlike the original energy charge, the new charge contains two options. One option is a fixed rate that mirrors NEP's marginal cost of energy. The second option is a formula that indexes the energy price to the prices of oil, gas, and other fuel using percentages that mirror NEP's generation mix. Thus, the options both are reasonable approximations of NEP's marginal energy cost, which BHE would have been charged under the original contract.
4. Terms exist to respond to an extended unscheduled outage.
 5. Standard definitional and protective clauses are contained in NEP's FERC tariff in the new contract.

IV. DECISION

The Stipulation states that it is the intent of the September 1, 1998, agreement to put BHE and NEP in as close to the same position as they would have been under the original contract. The OPA and BHE agree that BHE shall bear the risks associated with any change in costs arising from terminating the original contract and entering the new one. BHE further agrees not to seek adjustments in revenue requirements to reflect any such cost differences.

Our review indicates that the terms of the contract are comparable to those in the original contract. The Stipulation affords additional protections to ratepayers. In addition, terms in the original stipulation approved in 1995 remain in effect. Therefore, we approve the Stipulation and grant a Certificate of Public Convenience and Necessity to allow BHE to continue its purchase from NEP through October 31, 1999.

Accordingly, we

O R D E R

1. That the Stipulation, attached and incorporated into this Order as Attachment 1, agreed to by Bangor Hydro-Electric Company and the Public Advocate filed on September 10, 1998 in this Docket is approved;

2. That Bangor Hydro-Electric Company's request for a waiver of the notice and filing requirements in 35-A M.R.S.A. § 3133 and Chapter 332 is granted;

3. That a Certificate of Public Convenience and Necessity is issued for the power purchase between New England Power and Bangor Hydro-Electric Company as described in the September 1, 1998 letter and term sheet included in Bangor's September 10 filing, subject to the conditions in the Stipulation.

Dated at Augusta, Maine, this 20th day of October, 1998.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
 Nugent
 Diamond

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320 (1)-(4) and the Maine Rules of Civil Procedure, Rule 73 et seq.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320 (5).

Note:The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.